IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 750 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DISHA AGRO INDUSTRIES LTD - Petitioner(s)
Versus
GUJARAT STATE FINANCIAL CORPO. & 5 - Respondent(s)

==========

Appearance :
OFFICIAL LIQUIDATOR for Petitioner(s) : 1,
MR RD DAVE for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1,
MR AS VAKIL for Respondent(s) : 2, 4,
DS AFF.NOT FILED (R) for Respondent(s) : 3,
MR SHIRISH JOSHI for Respondent(s) : 5,

==========

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 12/07/2007

ORAL JUDGMENT

1. The petition was initially preferred by the Ex-Director of the company namely Disha Agro Industries

Ltd., Thereafter, as the order of winding up is passed, O.L. has stepped into the shoes of the management and therefore now petitioner is being represented through O.L. and one who was pursuing litigation namely Neetaben U Chokshi, is transposed as respondent.

2. The petition is preferred inter alia to quash and set aside action of the G.S.F.C. of taking over possession of the premises of the petitioner on 25.01.2000 and to restore the possession to the petitioner company, as the possession was already taken over. The prayers are added by amendment inter alia praying that the auction sale of the property be set aside including the plant and machinery and the possession be restored to the company and the purchaser, one of the respondent namely Bhagudev Sales Pvt. Ltd., be directed to pay Rs. 100/- lacs with the interest at the rate of 18 percent per annum. The petitioner has additionally prayed for adequate compensation to the petitioner.

3. Heard Mr. Modi, learned Counsel for the O.L. Mr. Dave, learned Counsel for the G.S.F.C., Mr. Vakil, learned Counsel for the respondent Nos. 3 and 4 and Mr. Shirish Joshi, learned Counsel for the respondent No. 5.

4. Upon hearing learned Counsel appearing for both the sides, it appears that the petition came to be filed

at the stage when the possession was taken over by G.S.F.C. in purported exercise of powers under section 29 of the State Financial Corporation Act, and as in the present petition no interim stay was granted by this Court, the recovery proceedings were taken further except to the extent of observing that the sale, if any, shall be subject to the further order/s of this Court. It further appears that pending the petition G.S.F.C. has issued advertisement and the offers were invited. As stated by the learned Counsel appearing for the G.S.F.C., the valuation of the property was approximately of Rs. 1,39,50,000/- whereas the offer accepted of the respondent No. 4 is of Rs. 1,11,11,111.10/-. It also appears that G.S.F.C. respondent No 1 while accepting the offer of the respondent no. 4 offered condition to respondent no. 4 for making down payment of 35 percent of Rs. 39,11,111.10 and the remaining amount of Rs. 72,00,000/- was to be paid within 3 years with the interest at the rate of 18 percent. It was expressly provided in the letter of G.S.F.C. dated 18.08.2000 that acceptance is subject to final order of this Court filed by company against the sale procedure, i.e. present proceedings. It appears that thereafter respondent no. 4 addressed the communication dated 14.08.2000 to G.S.F.C. praying for alteration of the condition

to make payment and thereafter, G.S.F.C. has addressed letter dated 28.08.2000, to the respondent no. 4 by further modifying the condition of making payment inasmuch as instead of the payment of Rs. 72,00,000/- with the interest at the rate of 18 percent, it was modified to the extent that the respondent no. 4 had to furnish bank guarantee or corporate guarantee to the satisfaction of the corporation or equal or more worth and till the period the said balance of Rs. 72,00,000/- remains unpaid, the interest at the rate of 18 percent was made payable to the corporation. As per respondent no. 4 in view of the said communication dated 28.08.2000, by the G.S.F.C., respondent no. 4 has made payment of Rs. 39,11,111.10 and has furnished corporate guarantee and has continued to pay interest at the rate of 18 percent and as per the G.S.F.C. and respondent no. 4 the possession has been handed-over by G.S.F.C. to respondent no. 4 of the factory premises.

5. It appears that in the year 2005 pending the present proceedings pursuant to the initiation of the proceedings for winding up in company petition No. 264 of 2000, the order for winding up has been passed by this Court and in view of the order passed by this Court in company petition No. 264 of 2000 dated 20.07.2005 the Official Liquidator is in

charge of the affairs of the company and at that stage the respondent no. 4 herein has earlier preferred company application No. 337 of 2005 prohibiting the Official Liquidator from taking over the possession and subsequently preferred company application No. 279 of 2006 for giving direction to the Official Liquidator to execute the sale deed in favour of the respondent No. 4 herein.

6. It does appear from the record that there was default on the part of the company in not paying the amount to G.S.F.C. consequently resulting into outstanding amount and G.S.F.C. had to take action under section 29 of the State Government Financial Corporation Act. Therefore, the action of the G.S.F.C. for taking possession in purported exercise of the power under section 29 of the Act cannot be said as illegal or arbitrary. Mr. Joshi, learned Counsel for the Ex-Director of the company in liquidation did submit that the proper procedure was not followed before taking possession or that with the other materials were lying and inspite of the same the possession is taken over and therefore, the action is arbitrary and unreasonable.

7. In my view such aspects cannot be entertained and examined, more particularly when it has transpired that the dues to G.S.F.C. were not paid and therefore G.S.F.C. had to take over the possession.

In any event, the client of Mr. Joshi is not in the management as on today and the fact remains that company is ordered to be wound up and the Official Liquidator is in charge of the company. Therefore restoration of the possession to the Ex-Director or management of the Company in Liquidation, cannot be ordered, and if any claim for such purpose is to be maintained it will be by the Official Liquidator. As the order of winding up has already been passed and this Court exercising power of company jurisdiction has to supervise action of Official Liquidator and has also to treat the matter for distribution of the assets of the company in liquidation, even if the action of G.S.F.C. for taking over possession is not interfered with by this Court in the exercise of power under article 226 of the Constitution, the property and further distribution thereof is to remain under the control of this Court exercising power under the company jurisdiction. Therefore I find that no useful purpose would be served in entertaining prayer for challenge against the legality and validity of the action by G.S.F.C. for taking over possession, but it deserves to be observed and clarified that the action which is subject matter of the challenge in the present petition shall be subject to further scrutiny by the company court so far as it relates

to distribution of the assets of the company in a just and reasonable manner as per company Act through O.L.

8. Concerning to the prayer made for challenging the auction and/or sale of the property to respondent no. 4 by G.S.F.C. is concerned, it prima facie appears that as against the valuation of the property as per valuation report of 1.39 crores, the properties are agreed to be sold at 1.11 crores, that itself is a loss of about 28 lacs. Further even after the offer was accepted, G.S.F.C. has altered the condition of accepting the Bank Guarantee or corporate guarantee as against the actual deposit of Rs. 70,00,000/- roughly about 65 percent of the consideration and the possession is handed-over at that stage. But in my view it would be necessary for this Court to conclude on the said aspects including that for examining the legality and validity of the sale in favour of respondent no. 4, more particularly in view of the peculiar circumstance that the sale deed is not executed by the G.S.F.C. in favour of the purchaser and at that stage the company is ordered to be wound up and company court is to look after the action of the Official Liquidator who is in charge of the company and functions under the supervision of this Court. As per provision of the company act this Court

exercising power under the company jurisdiction, can examine the legality and validity of the transaction of sale by taking care of interest of everybody including of secured creditors, workman dues, other creditors etc. Therefore on the said aspect, since the proceedings of winding up are pending before this Court in exercise of the company jurisdiction, no conclusion is required to be recorded and suffice it to observe that such sale shall be subject to scrutiny and finalization by this Court in its jurisdiction under the company act.

9. In view of the above subject to the aforesaid observations and directions. Petition stands disposed.

(JAYANT PATEL, J.)

Suresh*